IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 22841 of 2004(T)

PETITIONER:

OCEANIC FISHERIES INDIA LTD;
CONSUMER NO.7306, SAKTHIKULANGARA P.O.,
KALLAM, REP: BY ITS MANAGER TERRY RICHARD,
S/O.RICHARD, HOUSE NO.11/2, CUSTOMS ROAD,
PORT KOLLAM, KOLLAM.

BY ADV. SRI.GEORGE VARGHESE (MANACHIRACKEL)
ADV. SHRI.P.R.MILTON

RESPONDENTS:

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1. THE DEPUTY CHIEF ENGINEER, ANTI POWER THEFT SQUAD (H.O.), VAIDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

2. THE DEPUTY CHIEF ENGINEER, ELECTRICAL CIRCLE KOLLAM, CHINNAKADA, KOLLAM.

3. ASSISTANT ENGINEER, OFFICE OF THE ASST.ENGINEER, ELECTRICAL SECTION, SAKTHIKULANGARA, KAVANADU P.O., KOLLAM.

BY ADV. SRI.P.SANTHALINGAM, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, ALONG WITH WPC NO. 3608 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 22841/2004

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE LETTER DATED 20/12/2001 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

P2 : COPY OF THE NOTICE DATED 30/11/2002 ISSUED by the 3RD RESPONDENT.

P3 : COPY OF THE JUDGMENT IN OP 37433/02 OF THIS HON'BLE COURT.

P4 : COPY OF THE NOTICE DATED 01/01/2003 AFFIXED ON THE PREMISES OF THE PETITIONER by the 3RD RESPONDENT.

P5 : COPY OF THE DUPLICATE BILL ISSUED BY THE 3RD RESPONDENT.

P6 : COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

P7 : COPY OF THE JUDGMENT IN OP NO.9961/2003 OF THIS HON'BLE COURT.

P8 : COPY OF THE ARGUMENT NOTES SUBMITTED BEFORE THE 1ST RESPONDENT BY THE PETITIONER.

P9 : COPY OF THE ORDER DATED 24/06/2004 ISSUED by the 1ST RESPONDENT TO THE PETITIONER.

P10 : COPY of the LETTER ISSUED by the SBT, KOLLAM MAIN BRANCH TO THE 1ST RESPONDENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) Nos. 22841 of 2004 & 3608 of 2007

Dated, this the 22nd day of June, 2007

J U D G M E N T

Heard learned counsel for the petitioner and the learned senior counsel appearing for KSEB. Petitioner is challenging Ext.P5 bill and Ext.P9 order in appeal which are produced in WP(C) No. 22841/2004. It is seen that petitioner had two electric connection i.e. HT for a freezing plant and another LT for an ice plant. After default, HT connection to the freezing plant was disconnected and petitioner was allowed to retain the LT connection for ice plant. This was on 11/12/2001. However, on inspection conducted on 30/11/2002, it was noticed that the ice plant was not working and petitioner was running the freezing unit with the power taken from the LT connection. Even though petitioner denied the allegation, the fact was noticed by the inspecting team on inspection and the same is recorded in the mahazar. Further the appellate authority while considering appeal noticed the power consumption in LT connection was only 700 units per month. After the alleged diversion of power, the consumption in the LT connection went up

to 17110 units per month. It is proved beyond doubt that petitioner was diverting power from LT connection to the HT installation, which is unauthorized use of power that attracts application of Clause 42 (d). Therefore, the challenge against the penal bill and order in appeal in principle has to be only rejected and I do so.

2. Learned counsel for the petitioner referred to Clause 42 (d) and contended that the minimum charges to be charged can be only for six months. However, learned counsel appearing for KSEB pointed out that the condition applied for in Clause 42(d) is for charging penal rate for six months only. Even the Board is not able to establish misuse for longer period, he referred to the appellate order and contended that the exact period of unauthorized use is established through consumption recorded in the bills and therefore the demand sustained in appeal is tenable. Of course, the appellate authority has referred to the difference in monthly bills prior to and after the commencement of unauthorized diversion of power. Even though longer period of unauthorized use is established beyond six months, there is nothing to indicate as to whether petitioner has started ice plant after the shut down. Moreover, in the penal bill

the entire period of December is also taken for unauthorized billing. In the circumstances, I direct the respondents to revise and demand penal charges only for 9 months' unauthorized use, which leads to a reduction of 25% of the bill amount. However, since the units are closed, I feel petitioner can be granted waiver of 50% of the surcharge, provided, the sustained demand with interest as above is paid in three equal monthly installments, first of which will be paid on or before 31/07/2007 and balance on or before 31st day of two succeeding months. However, if payment is not made as above, waiver of 50% of surcharge granted will stand automatically vacated on first default and respondents are free to recover the entire liabilities. RR proceedings will remain stayed for payment as above and recovery will be continued if payment is not made within the time granted as above.

These WP(C)s are disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

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